

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Leopoldo Galvan, Jr.,

Plaintiff,

v.

Atlantic Square, LLC, a Delaware
Limited Liability Company; and
Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Leopoldo Galvan, Jr. complains of Atlantic Square, LLC, a Delaware Limited Liability Company; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a T-12 paraplegic. He uses a wheelchair for mobility.
2. Defendant Atlantic Square, LLC owned the real property located at or about 2000 S. Atlantic Blvd., Monterey Park, California, in May 2018.
3. Defendant Atlantic Square, LLC owns the real property located at or

1 about 2000 S. Atlantic Blvd., Monterey Park, California, currently.

2 4. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the property and business, or their
4 relative responsibilities in causing the access violations herein complained of,
5 and alleges a joint venture and common enterprise by all such Defendants.
6 Plaintiff is informed and believes that each of the Defendants herein,
7 including Does 1 through 10, inclusive, is responsible in some capacity for the
8 events herein alleged, or is a necessary party for obtaining appropriate relief.
9 Plaintiff will seek leave to amend when the true names, capacities,
10 connections, and responsibilities of the Defendants and Does 1 through 10,
11 inclusive, are ascertained.

12
13 **JURISDICTION & VENUE:**

14 5. The Court has subject matter jurisdiction over the action pursuant to 28
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 6. Pursuant to supplemental jurisdiction, an attendant and related cause
18 of action, arising from the same nucleus of operative facts and arising out of
19 the same transactions, is also brought under California's Unruh Civil Rights
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
22 founded on the fact that the real property which is the subject of this action is
23 located in this district and that Plaintiff's cause of action arose in this district.

24
25 **FACTUAL ALLEGATIONS:**

26 8. Plaintiff went to the property in May 2018 to shop at Atlantic Square
27 Shopping Center ("Shopping Center").

28 9. The Shopping Center is a facility open to the public, a place of public

1 accommodation, and a business establishment.

2 10. Parking spaces are one of the facilities, privileges, and advantages
3 offered by Defendants to patrons of the Shopping Center.

4 11. Unfortunately, even though there were parking space marked and
5 reserved for persons with disabilities in the parking lot serving the Shopping
6 Center during Plaintiff's visit, the parking stalls and access aisles have cross
7 slopes and running slopes greater than 2.1%.

8 12. Indeed, not a single parking space had cross slopes and running slopes
9 that were below 2.1%.

10 13. Currently, the parking stalls and access aisles are not level with each
11 other.

12 14. Paths of travel are another one of the facilities, privileges, and
13 advantages offered by Defendants to patrons of the Shopping Center.

14 15. Unfortunately, the walkways in front of many of the buildings at the
15 Shopping Center have cross slopes that are more than 2.1%.

16 16. Finally, plaintiff wanted to travel from Foot Locker to Yogurtland.
17 Unfortunately, there was no safe route of travel for plaintiff to use. The paths
18 of travel would have required the plaintiff to travel with and against traffic or
19 travel behind parked cars. This was dangerous for plaintiff.

20 17. Defendants have failed to maintain in operable working condition those
21 features of facilities and equipment that are required to be readily accessible to
22 and usable by persons with disabilities at the Subject Property.

23 18. Plaintiff personally encountered this barrier.

24 19. This inaccessible facility denied the plaintiff full and equal access and
25 caused him difficulty, discomfort, and embarrassment.

26 20. The defendants have failed to maintain in working and useable
27 conditions those features required to provide ready access to persons with
28 disabilities.

1 21. The barriers identified above are easily removed without much
2 difficulty or expense. They are the types of barriers identified by the
3 Department of Justice as presumably readily achievable to remove and, in fact,
4 these barriers are readily achievable to remove. Moreover, there are numerous
5 alternative accommodations that could be made to provide a greater level of
6 access if complete removal were not achievable.

7 22. For example, there are numerous paint/stripe companies that will come
8 and stripe level parking stalls and access aisles and install proper signage on
9 rapid notice, with very modest expense, sometimes as low as \$300 in full
10 compliance with federal and state access standards.

11 23. Plaintiff will return to the Shopping Center to avail himself of its goods
12 or services and to determine compliance with the disability access laws. He is
13 currently deterred from doing so because of his knowledge of the existing
14 barriers. If the barriers are not removed, the plaintiff will face unlawful and
15 discriminatory barriers again.

16 24. Given the obvious and blatant nature of the barriers and violations
17 alleged herein, the plaintiff alleges, on information and belief, that there are
18 other violations and barriers on the site that relate to his disability. Plaintiff will
19 amend the complaint, to provide proper notice regarding the scope of this
20 lawsuit, once he conducts a site inspection. However, please be on notice that
21 the plaintiff seeks to have all barriers related to his disability remedied. See
22 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
23 encounters one barrier at a site, he can sue to have all barriers that relate to his
24 disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

25. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

26. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix "D."
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals

1 with disabilities. 42 U.S.C. § 12183(a)(2).

2 27. Under the 2010 Standards, access aisles shall be at the same level as the
3 parking spaces they serve. Changes in level are not permitted. 2010 Standards
4 502.4. "Access aisle are required to be nearly level in all directions to provide
5 a surface for wheelchair transfer to and from vehicles." 2010 Standards §
6 502.4 Advisory.

7 28. Here, the failure to provide level parking is a violation of the law.

8 29. Nowhere shall the cross slope of an accessible route exceed 2.1%. 2010
9 Standards § 403.3.

10 30. Here, the slopes along the walkways exceeded the levels allowed by law.

11 31. Under the ADA, there must be at least one accessible route connecting
12 every building on the same site. 2010 Standards § 206.2.2. Travel in the
13 vehicular drive path with vehicles is not part of an accessible route.

14 32. Here, the failure to provide an accessible route is a violation of the law.

15 33. The Safe Harbor provisions of the 2010 Standards are not applicable
16 here because the conditions challenged in this lawsuit do not comply with the
17 1991 Standards.

18 34. A public accommodation must maintain in operable working condition
19 those features of its facilities and equipment that are required to be readily
20 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

21 35. Here, the failure to ensure that the accessible facilities were available
22 and ready to be used by the plaintiff is a violation of the law.

23
24 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
25 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
26 Code § 51-53.)

27 36. Plaintiff repleads and incorporates by reference, as if fully set forth
28 again herein, the allegations contained in all prior paragraphs of this

1 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
2 that persons with disabilities are entitled to full and equal accommodations,
3 advantages, facilities, privileges, or services in all business establishment of
4 every kind whatsoever within the jurisdiction of the State of California. Cal.
5 Civ. Code §51(b).

6 37. The Unruh Act provides that a violation of the ADA is a violation of the
7 Unruh Act. Cal. Civ. Code, § 51(f).

8 38. Defendants’ acts and omissions, as herein alleged, have violated the
9 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
10 rights to full and equal use of the accommodations, advantages, facilities,
11 privileges, or services offered.

12 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
13 discomfort or embarrassment for the plaintiff, the defendants are also each
14 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
15 (c).)

16
17 **PRAYER:**

18 Wherefore, Plaintiff prays that this Court award damages and provide
19 relief as follows:

20 1. For injunctive relief, compelling Defendants to comply with the
21 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
22 plaintiff is not invoking section 55 of the California Civil Code and is not
23 seeking injunctive relief under the Disabled Persons Act at all.

24 2. Damages under the Unruh Civil Rights Act, which provides for actual
25 damages and a statutory minimum of \$4,000 for each offense.
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1 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3
4 Dated: December 7, 2018

CENTER FOR DISABILITY ACCESS

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6 By: 

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8 _____
9 Chris Carson, Esq.
10 Attorney for plaintiff
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